

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Crl.Rev.Pet.No. 3775 of 2007()

ST.1869/2007 of JUDL. MAGISTRATE OF FIRST CLASS-IV (MOBILE),
TRIVANDRUM

.....

REVN. PETITIONER: COUNTER PETITIONER

MAJITHA BEEVI, AMINA,
KALLAMBALAM, THIRUVANANTHAPURAM.

BY ADV. SRI.MANOJ R.NAIR

RESPONDENTS: STATE /PETITIONER

1. THE SENIOR MANAGER,
KERALA STATE CO-OPERATIVE BANK LIMITED,
HEAD OFFICE BRANCH, PALAYAM,
THIRUVANANTHAPURAM, PIN: 695 001.
2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 22/10/2007,THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V. RAMKUMAR , J
=====

CRL. R.P. NO. 3775 OF 2007

=====

Dated this the 22nd day of October, 2007.

ORDER

The revision petitioner, a Muslim lady is the accused in S.T. No. 1869/2007 on the file of the Judicial First Class Magistrate-IV (Mobile Court), Thiruvananthapuram which is a prosecution for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The cheque amount is Rs.51,564/- . The complaint was filed by the Kerala State Co-Operative Bank, Thiruvananthapuram through its Senior Manager. There was a delay of 17 days in filing the complaint. Initially the Magistrate took cognizance of the offence without even condoning the delay which resulted in the accused filing Crl. M.C No. 1752/2007 before this Court. This Court set aside the cognizance and directed the court below to consider the question of delay after hearing the accused as well. Thereafter, as per the impugned order dated 01.09.2007, the Magistrate has allowed C.M.P. No. 2027/2007 filed by the complainant for condoning the aforesaid delay. The reason put forward was that the counsel who filed the complaint was laid up. This ground was opposed by the revision petitioner/accused contending inter alia that the counsel had not even filed an affidavit before the court and that the affidavit which was filed was that of the

complainant. However, the court below accepted the ground in support of the delay and condoned the same.

2. The learned counsel for the revision petitioner submitted that the observation in the impugned order that the petition to condone the delay is moved by the very same counsel whose illness is projected as a ground to condone the delay is factually wrong since the complaint was filed by one Advocate Shri. Anil Kumar whereas the petition to condone the delay was moved by another advocate named Shri.S.P. Deepak .

3. Of course the expression "moved" if given its semantically logical conclusion would only mean that it was argued and not filed. But, the fact remains that the complaint as well as the petition to condone the delay were filed by the counsel who was allegedly laid up and there was a change of vakalath subsequently. In any view of the matter, the court below has been indulgent enough to condone the delay of 17 days in filing the said complaint on the ground of illness of the counsel who filed the complaint on behalf of the complainant. I see no ground to interfere with the condonation of the delay in filing the complaint.

4. The learned counsel for the revision petitioner then submitted that Annexure A4 receipt will show that as against the liability of Rs.51,564/- due under the cheque in question , the revision petitioner has discharged a sum of Rs.75,000/- and she being a Muslim woman will be subjected to the ordeal of appearance before the court on all the days of posting of S.T. No. 1869/2007. I do not think that in a prosecution of this nature, the accused should appear before the court on all the days of posting except when the case is actually taken up for trial. The revision petitioner shall move the Magistrate under Section 317 Cr.P.C seeking exemption if and when such motion is made, I am sure that the Magistrate shall be indulgent enough to exempt the revision petitioner from appearing before that Court except when it is absolutely necessary.

The Crl.R.P is disposed of accordingly.

V. RAMKUMAR, JUDGE.

CRL.R.P. NO. 3775/2007

: 4 :